

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Michael Gordon,)	
)	
Plaintiff,)	ORDER ADOPTING REPORT
)	AND RECOMMENDATION
vs.)	
)	Case No. 1:15-cv-026
Leann K. Bertsch, Director, et al.,)	
)	
Defendants.)	

The Plaintiff, Michael Gordon, initiated this proceeding *pro se* and *in forma pauperis* on March 9, 2015. See Docket No. 1. On May 31, 2017, the Defendants filed a motion for summary judgment. See Docket No. 64. On October 4, 2017, Gordon filed a response opposing the motion. See Docket No. 88. On January 3, 2018, Magistrate Judge Charles S. Miller, Jr., issued a Report and Recommendation, in which he recommended that the Defendants' motion for summary judgment be granted. See Docket No. 93. Gordon was given an initial period and an extension until March 9, 2018, to file an objection. No objection was received.

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the entire record, and finds the Report and Recommendation to be persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 93) in its entirety and **GRANTS** the Defendants' motion for summary judgment (Docket No. 64), as follows:

1. Gordon's Eighth Amendment claims against defendants Hagan and Wilkens are **DISMISSED WITH PREJUDICE**;
2. Gordon's retaliation claims against defendants Heit and Foster are **DISMISSED WITH PREJUDICE**; and
3. Gordon's retaliation claims against defendants Flanagan, Stromme, Walk, Thuerer, Kulman, Belisle, Schwehr, and Helgeson are **DISMISSED WITHOUT PREJUDICE** for failure to exhaust available prison remedies.

In addition, the Court **FINDS** that any appeal would be frivolous, could not be taken in good faith, and may not be taken *in forma pauperis*.

Let judgment be entered accordingly.

IT IS SO ORDERED.

Dated this 14th day of March, 2018.

/s/ Daniel L. Hovland
Daniel L. Hovland, Chief Judge
United States District Court